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EY: V REISINGER

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF YAVAPAI**

9 **STATE OF ARIZONA,**

10 Plaintiff,

11 vs.

12 **STEVEN CARROLL DEMOCKER,**

13 Defendant.

CAUSE NO. P1300CR201001325

**STATE'S RESPONSE TO MOTION IN
LIMINE RE: SY RAY**

Assigned to Hon. Gary Donahoe

14 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and
15 her deputy undersigned hereby responds to Defendant's Motion in Limine Re: State's Expert Sy
16 Ray. This motion is supported by the following memorandum of points and authorities.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 Cell phone expert Sy Ray's report dated January 24, 2012 regarding Defendant's cell
19 phone is attached hereto and incorporated by reference. Sy Ray reviewed Defendant's cell phone
20 records for a period from June 1, 2008 to July 4, 2008. During this time frame, there were 648
21 lines of account activity. Based on a review of these 648 lines of account activity, Sy Ray did not
22 note another period of time, other than July 2, 2008 between 5:36 p.m. to 10:05 p.m., where
23 Defendant's phone was powered off for nearly 4 and ½ hours. Sy Ray opines "(b)ased on the
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1 sample provided, the activity seen on 07/02/2008 between 1736 hours and 2205 hours is irregular
2 and outside the normal pattern seen.”

3 Defendant’s cell phone records for this time period will be admitted in to evidence at trial.
4 It will be an undisputed fact based upon these records that Defendant never went a period of 4
5 and ½ hours, other than possibly over night, with his phone powered off. On this issue, Sy Ray
6 simply adds his opinion that this is irregular and outside the normal pattern seen.
7

8 Although Sy Ray typically prefers to review at least 90 days of cell phone records, he has
9 had cases where he has had as little as 3 days of cell phone records. The fact that Sy Ray had 35
10 days of cell phone records in this case is not a basis to preclude his opinion on this issue. It goes
11 to weight, not admissibility.

12 Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it
13 would be without the evidence and; (b) the fact is of consequence in determining the action. Rule
14 401, Arizona Rules of Evidence.
15

16 Clearly, the fact that the Defendant has his phone powered off for 4 and ½ hours around
17 the time that his ex-wife, Carol Kennedy, was murdered is relevant. Clearly, the fact that the
18 Defendant never checked the multiple messages that he received while his phone was powered
19 off is relevant. The fact that Defendant has no alibi during this period is relevant. Likewise, it is
20 relevant that this is irregular and outside Defendant’s normal pattern.
21

22 The Court may exclude relevant evidence only if its probative value is *substantially*
23 outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue
24 delay, wasting time, or needlessly presenting cumulative evidence. Rule 403, Arizona Rules of
25 Evidence (emphasis added). Sy Ray’s opinion is not unfairly prejudicial, nor does it confuse the
26

1 issues, cause delay or waste time, or present cumulative evidence. Accordingly, there is no basis
2 to preclude this evidence.

3 Sy Ray is qualified as a cell phone expert based upon his knowledge, skill, experience,
4 training and education. Rule 702, Arizona Rules of Evidence. His specialized knowledge will
5 help the jury understand the cell phone evidence in this case as it pertains to this issue. His
6 testimony will be based upon Defendant's cell phone records. His testimony will be the product
7 of simply reviewing these cell phone records on this issue. Accordingly, there is no basis to
8 preclude this evidence.
9

10 Based upon the foregoing, the State respectfully requests that the Court deny Defendant's
11 motion in limine re: Sy Ray.

12 **RESPECTFULLY SUBMITTED** this 5 day of March, 2012.

13 **Sheila Sullivan Polk**
14 **YAVAPAI COUNTY ATTORNEY**

15 By: Steven A. Young
16 **Steven A. Young**
17 Deputy County Attorney

18 **COPY** of the foregoing **emailed** this
19 5th day of March, 2012, to:

20 Honorable Gary Donahoe
21 Division 1
22 Yavapai County Superior Court
23 Via email to: gdonahoe@courts.az.gov

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By: 

State of Arizona,
vs.
Steven Carroll Democker

Call Detail Records Analysis
Verizon Mobile Device 928-713-1919
Completed by Sy Ray
Completed 01/24/2012

Analysis of cell phone records, to include tower information, on the Verizon cell phone with the MDN 928-713-1919, between the dates of June 1, 2008 - 14:48:29 hours, through July 4, 2008 - 20:09:21 hours.

Sample data is 648 lines of account activity divided into 10 columns of data. Data is in the typical format seen for Verizon phone records, Switch Information, Date, Time, Originating Tower, Terminating Tower, Direction, MDN, Called Number, Auto CPN, Sqr Dur (length of call in seconds). No abnormalities seen outside of typical Verizon records format.

Special consideration is given for what appears to be an out of state trip taken between June 25 and June 27. Trip originates and terminates from Sky Harbor Airport, most likely terminal 3. Air travel, switch information, and local calls in the Chicago area are seen to confirm the mobile device did travel out of state. In reference to frequency report, this time frame is not considered due to typical patterns would not apply. Based on call information, the trip appears to be, at least in part, a business trip in reference to UBS.

The call detail records were reviewed in reference to the handset being powered off and remaining off for a duration of time as seen on 07/02/2008 between 1736 and 2205 hours. Simply put, is it common for the handset to be powered off in the manner seen on 07/02/2008.

Of the 648 line of activity, 20 lines (roughly 3%) were observed that indicated no tower information was captured and the call was forwarded to voicemail. The combination of this pattern is a typical indicator if the handset being off, or in use causing the secondary call to be transferred to voicemail. In reviewing calls proceeding and following the calls noted above, most can be attributed to the mobile device being active and forwarding the call to voicemail, or switch information.

The only period of time observed in reference to multiple (2) missed calls where the phone may have been powered off overnight is on the night of 06/27/2008. It should be noted the mobile device is in the Scottsdale/Phoenix area overnight, outside the home area. It should also be noted the time period observed, 2230 hours through the next morning, typically no phone activity is seen. Due to this it is unknown if the phone is off or simply inactive.

Observations noted above are displayed below.

Gilbert	6/2/2008	19:14:48	0	206	MF	(928) 713-1919	(1151928) 713-1919	(802) 233-6259	68	Forward to voicemail, phone not off, dup calls
Phoenix1	6/6/2008	10:02:08	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-9223	71	Missed call, possibly off
Phoenix1	6/6/2008	12:52:03	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 541-5080	49	Unknown, possible off
Gilbert	6/6/2008	14:33:38	0	206	MF	(928) 713-1919	(1151928) 713-1919	(802) 233-6259	36	followed by voicemail
Gilbert	6/7/2008	11:38:42	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-1309	3	followed by voicemail
Gilbert	6/7/2008	11:45:51	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-1309	92	followed by voicemail
Phoenix1	6/9/2008	10:42:49	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	6	Switch
Phoenix1	6/9/2008	22:21:38	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-1309	24	Missed call, followed by voicemail
Gilbert	6/18/2008	15:43:05	0	206	MF	(928) 713-1919	(1151928) 713-1919	(802) 233-6259	11	Missed call, followed by voicemail
Phoenix1	6/21/2008	11:40:59	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 533-2729	12	switch info, phone is on and active
Phoenix1	6/21/2008	18:19:58	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	4	switch info, phone is on and active
Phoenix1	6/21/2008	18:20:07	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	3	missed call, temporary off?
Gilbert	6/23/2008	18:51:16	0	206	MF	(928) 713-1919	(1151928) 713-1919	(802) 233-6259	12	Possibly off or missed call
Gilbert	6/24/2008	21:33:12	0	206	MF	(928) 713-1919	(1151928) 713-1919	(802) 233-6259	49	switch info, phone is on and active
Phoenix1	6/27/2008	22:26:49	0	206	MF	(928) 713-1919	(1151928) 713-1919	(714) 469-9208	27	Possibly off over night, traveling
Phoenix1	6/27/2008	22:56:36	0	206	MF	(928) 713-1919	(1151928) 713-1919	(312) 513-0650	6	Possibly off over night, traveling
Phoenix1	6/28/2008	14:09:50	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 533-2729	3	Missed call, or switch
Gilbert	6/28/2008	14:13:45	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-1309	5	Missed call, or switch
Gilbert	6/28/2008	14:14:51	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-1309	4	Missed call, or switch
Phoenix1	6/28/2008	14:35:57	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 925-1309	71	Missed call or switch

In comparing the activity seen on 07/02/2008 between 1736 hours and 2205 hours to the records reviewed, there is no previous activity noted that is similar. **Based on the sample provided, the activity seen on 07/02/2008 between 1736 hours and 2205 hours is irregular and outside the normal pattern seen.** In all, 11 calls are missed while the phone is powered off. Given the durations of several of the calls, messages appear to have been left, two of which appear to be from family and fiancé.

Phoenix1	7/2/2008	17:36:37	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 445-7626	22
Phoenix1	7/2/2008	20:05:10	0	206	MF	(928) 713-1919	(1151928) 713-1919	(615) 885-0913	37
Phoenix1	7/2/2008	20:44:14	0	206	MF	(928) 713-1919	(1151928) 713-1919	(615) 886-9909	72
Phoenix1	7/2/2008	20:46:22	0	206	MF	(928) 713-1919	(1151928) 713-1919	(615) 310-4912	15
Phoenix1	7/2/2008	21:03:04	0	206	MF	(928) 713-1919	(1151928) 713-1919	(615) 886-9909	7
Phoenix1	7/2/2008	21:40:07	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	5
Phoenix1	7/2/2008	21:40:17	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	7
Phoenix1	7/2/2008	21:51:12	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 533-2729	34
Phoenix1	7/2/2008	21:52:14	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	6
Phoenix1	7/2/2008	21:52:32	0	206	MF	(928) 713-1919	(1151928) 713-1919	(928) 713-8182	50
Phoenix1	7/2/2008	22:05:47	0	206	MF	(928) 713-1919	(1151928) 713-1919	(615) 886-9909	5

It was also noted the mobile device was utilizing cell tower Phoenix1-202 when it was powered back on at 22:08 hours (corroborated with text records as time device was powered on), which appears to be the devices home tower (tower most used indicating the primary area the user is commonly in). If Mr. DeMocker would have powered up the device at the conclusion of his reported bike ride, I would expect to see the device utilize another tower, most likely Phoenix1-185. Based on this, it appears Mr. DeMocker would have traveled out of the area where he reportedly parked during his bike ride before powering the phone back on. Based on my training and experience, this would be unusual given the late hour and complications reportedly encountered by Mr. DeMocker.

This concludes the information noted in reference to the records listed above.